

IN THE HIGH COURT OF KERALA AT ERNAKULAM

PRESENT :

THE HONOURABLE MR. JUSTICE PIUS C.KURIAKOSE

FRIDAY, THE 20TH JULY 2007 / 29TH ASHADHA 1929

WP(C).No. 37467 of 2004(I)

CC.34/2000 of J.M.F.C - II, CHENGANACHERRY

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PETITIONER:

SHALIMA, W/O.DR.MUHAMMED SALIM,
REP. BY HER POWER OF ATTORNEY HOLDER NAMELY,
ABDUL KHADER KUNJU, OVELIL HOUSE,
FATHIMAPURAM, PERUNNA, CHANGANACHERRY.

BY ADV. SRI.LAL GEORGE,
SRI.ANIMON A. JOHN

RESPONDENT:

M.C.THOMAS, S/O.M.C.CHACKO,
MULAVELIL(PARIYARAM, THUKALASSERY),
THIRUVALLA.

BY ADV. SRI.VARGHESE P.THOMAS
SRI.JAGAN GEORGE

THIS WRIT PETITION (CIVIL) HAVING BEEN FINALLY HEARD
ON 20/07/2007, THE COURT ON THE SAME DAY DELIVERED THE
FOLLOWING:

WPC.37467/04

APPENDIX

PETITIONER'S EXTS:

EXT.P1 – TRUE PHOTO COPY OF RELEVANT APPENDIX PORTION OF JUDGMENT IN O.S.13/2000.

EXT.P2 – TRUE PHOTO COPY OF POSTAL ACKNOWLEDGMENT CARD EVIDENCING RECEIPT OF LAWYER NOTICE BY RESPONDENT.

EXT.P3 – TRUE PHOTO COPY OF COMPLAINT ON THE FILES OF JFCM (MOBILE), CHANGANASSERY.

EXT.P4 – TRUE PHOTO COPY OF LAWYER NOTICE.

EXT.P5 – TRUE PHOTO COPY OF ACKNOWLEDGMENT RECEIPT EVIDENCING RECEIPT OF LAWYER NOTICE.

/TRUE COPY/

PIUS C. KURIAKOSE, J.

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W.P.(C)No.37467 OF 2004
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DATED THIS THE 20th JULY, 2007

J U D G M E N T

The petitioner who is the complainant in C.C.No.34 of 2000 on the files of the Judicial First Class Magistrate's Court (Mobile), Changanassery is aggrieved in that the court is insisting on the trial of the case even before she is able to produce the original of the postal acknowledgment card relating to the dishonoured cheque which is subject-matter of the complaint. According to the learned counsel for the petitioner, the original of the postal acknowledgment card was produced as Ext.A6 in O.S.No.13 of 2000, a money recovery suit which the petitioner had filed before the Thiruvalla Sub Court. But when application was submitted before that court for return of the original of Ext.A6, it was reported that the original of Ext.A6 is missing. Mr.Lal George, counsel for the petitioner submits that this Court on the administrative side has ordered an enquiry into the circumstances under which the original of Ext.A6 became missing.

2. O.S.No.13 of 2000 concededly has now been dismissed and appeal A.S.No.154 of 2002 is said to be pending before this Court. The trial of C.C.34 of 2000, I am told, is now stalled for want of the original of Ext.A6. The following are the prayers in this Writ Petition:-

i) issue a writ of mandamus or any other writ, order or direction, directing the learned Judicial First Class Magistrate's Court (Mobile), Changanassery not to proceed with the trial of C.C.No.34 of 2000, without affording an opportunity to the petitioner to produce the reconstructed acknowledgment card (Ext.A6 in O.S.No.13 of 2000);

ii) to declare that the petitioner is entitled to produce the photo copy of Ext.P2 document (Ext.A6 in O.S.13 of 2000) in the place of original of the acknowledgment card and proceed with the trial of the case on that basis.

iii) issue a writ of mandamus or any other appropriate writ, order or direction, directing the Judicial First Class Magistrate's Court (Mobile), Changanassery to permit the petitioner to produce the photo copy of the reconstructed copy of Ext.P2 (Ext.A6 in O.S.13 of 2000) and proceed with the trial of the case.

3. Having considered the submissions addressed before me by Sri.Lal George, counsel for the petitioner and Sri.Varghese P.Thomas, counsel for the respondent-accused before the court below, I am of the view that it is for the petitioner to obtain permission either from this Court in its civil appellate jurisdiction by filing necessary applications in A.S.No.154 of 2002 or from the Thiruvalla Sub Court

itself, if the records in O.S.13 of 2002 continue to be retained by that court, for reconstructing Ext.A6 by using the photo copy of Ext.A6 which is produced in this Court as Ext.P2 and produce the reconstructed copy before the learned Magistrate. Even otherwise, it is always open to the petitioner to produce another copy of Ext.P2 before the learned Magistrate and seek reception of that in evidence as a substitute for the original of Ext.A6, appraising the learned Magistrate regarding the circumstances under which the petitioner has become unable to produce the original of Ext.A6.

Subject to the above observations, the Writ Petition will stand disposed of.

(PIUS C.KURIAKOSE, JUDGE)

tgl

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